

Legal Opinion: GMP-0118

Index: 7.205, 7.265, 7.364, 7.450
Subject: FOIA Appeal: Section 8 Tenants

September 1, 1992

Ms. Barbara E. Uthe
3 Hortus Court
St. Louis, MO 63110

Dear Ms. Uthe:

This responds to your July 2 and 22, 1992, Freedom of Information Act (FOIA) appeals. You appeal the June 15 and July 8 1992, determinations of the St. Louis Field Office's partial denial of your requests for information. Specifically, you requested under the FOIA the number of Section 8 units in the Shaw neighborhood, located in St. Louis, Missouri. During your initial telephonic request for the information, you were advised that there were a total of seventy-seven units. You asked for written confirmation of this information. Kenneth G. Lange, Manager, in his letter to you dated June 15, 1992, confirmed that there were 90 Section 8 assisted units in the Shaw area. He also withheld the names and addresses of the Section 8 recipients pursuant to Exemption 6 of the FOIA. In his follow-up letter of July 8, 1992, Mr. Lange advised that the Department does not maintain information on the rents, utility allowances, and tenant contributions for individual Section 8 units.

I have decided to sustain the determination of the St. Louis Office with respect to your request for a breakout of information on individual Section 8 units for the reasons contained in St. Louis' initial denial letter. The St. Louis Office, in its response, advised you that it did not maintain Section 8 units by individual blocks which you requested. They correctly stated that Federal agencies are not required to create a record which does not already exist to respond to a FOIA request. See *NLRB v. Sears, Roebuck and Co.*, 421 U.S. 132, 161-62 (1974).

I have also determined to affirm the initial denial withholding the names and addresses of individual receiving Section 8 assistance under Exemption 6 of the FOIA. Exemption 6 protects information in medical and personnel files and information in "similar files." The Supreme Court in *United States Department of State v. Washington Post*, 456 U.S. 595, 602 (1982) gave "similar files" a broad rather than a narrow meaning, reading Exemption 6 to cover detailed Government records and files on an individual which can be identified as applying to that individual. Whether release of information constitutes a clearly unwarranted invasion of personal privacy is determined by balancing the public interest in disclosure against the potential invasion of individual privacy. *Washington Post v. Department of Health and Human Services*, 690 F.2d 252, 258 (D.C. Cir. 1982).

Disclosure of the identities of individuals receiving financial rental assistance would constitute a substantial invasion of privacy. There is a strong privacy interest in withholding this personal information. See American Federation of Government Employees, AFL-CIO, Local 1923 v. United States Department of Health and Human Services, 712 F.2d 931, 932 (4th Cir. 1983); Wine Hobby, USA, Inc. v. United States Internal Revenue Service, 502 F.2d 133 (3rd Cir. 1974); (individual's name and address are protectible privacy information); Aronson v. HUD, C.A. No. 86-0333-S (D. Mass. 1986), aff'd in part, rev'd in part, 822 F.2d 182 (1st Cir. 1987) (personal financial information lies near the core of the privacy interests protected by Exemption 6).

HUD's regulation, 24 C.F.R. Section 15.21, states that a "requested record shall not be withheld from inspection or copying unless it both (1) comes within one of the classes of records exempted by 5 U.S.C. Section 552, and (2) there is a need in the public interest to withhold it."

I have determined that the information falls within Exemption 6 of the FOIA. Concerning the public interest determination, HUD's regulation at 24 C.F.R. Section 16.1(e)(3) states that:

A Freedom of Information Act request from an individual for records about another individual contained in a Privacy Act Records System shall be processed as follows: when an exemption under subsection (b) of FOIA is available, the Privacy Act governs the public interest determination under HUD FOIA regulations (24 CFR Section 15.21) and compels the withholding of such documents

Because the information you have requested is contained in a Privacy Act System of Records (HUD/H-11, Multifamily Tenant Characteristics Data, 55 Fed. Reg. 42909, October 24, 1990) and the information can be withheld under Exemption 6 of the FOIA, then, under the regulations at 24 C.F.R. Section 16.1(e)(3), the Privacy Act governs the public interest determination and compels withholding of the information.

You may seek judicial review of this determination under 5 U.S.C. Section 552(a)(4).

Very sincerely yours,

George L. Weidenfeller
Deputy General Counsel (Operations)

cc: Yvette Magruder
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